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Federal Communications Commission
Office of Secretary

June 13, 1997

Mr. William Caton
Acting Secretary
Federal Communication Commission
1919 M Street, N.W.
Washington, DC 20554

Ex Parte Re: CC Docket No. 97-100

Dear Mr. Caton:

The Arkansas Public Service Commission (APSC) is not a party to CC Docket No. 97-100 and has not taken a position on the merits of the Petition filed by American Communications Services, Inc. (ACSI) for a declaratory ruling preempting the Arkansas Telecommunications Regulatory Reform Act of 1997, 1997 Ark. Acts 77.¹ The purpose of this letter is to clarify inaccurate and misleading statements in the Reply Comments filed by the Arkansas Telephone Association (ATA) in CC Docket No. 97-100.

In its Reply Comments, the ATA refers to an analysis of Senate Bill 54, which was enacted as 1997 Ark. Act 77, dated January 24, 1997. ATA says of the analysis, which was attached to the Comments of AT&T, "the analysis is inaccurate, unofficial, authored by person [sic] of unknown ability and not endorsed by the Arkansas PSC."² The ATA's statement is without foundation or merit. The analysis attached to AT&T's Comments was prepared by attorneys and senior members of the APSC Commissioners' Staff experienced in telecommunications law and policy under the direct supervision of the APSC Commissioners. The analysis was prepared for the use of the

¹ The Attorney General of the state of Arkansas, representing the interests of the state, has filed comments and reply comments in this proceeding.

² ATA Reply Comments at 9.

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Governor of the State of Arkansas and the APSC. It was also prepared in anticipation that one or more members of the Arkansas General Assembly might request the APSC to provide such an analysis to the General Assembly. Arkansas State Senator George Hopkins, a lead sponsor of Senate Bill 54 and the attorney who signed the ATA Reply Comments, was personally provided a copy of the analysis by the APSC and is fully aware that the analysis reflects the official position of the APSC.³

On November 16, 1995, the Legislative Council of the Arkansas General Assembly adopted Interim Study Proposal 95-53 forming a study committee to review reform of telecommunications laws in the state and directing the APSC to "suspend any pending regulatory proceedings regarding telecommunications issues related to competition and universal service until the findings of the interim committees are issued and pending federal legislation." A Telecommunications Subcommittee of the Joint interim Committees on Insurance and Commerce was formed. ATA attorney State Senator Hopkins was an ex-officio member of the Subcommittee. The APSC began providing information and analysis of telecommunications reform proposals to the Telecommunications Subcommittee of the General Assembly in February, 1996.

Draft telecommunications legislation was submitted to the Telecommunications Subcommittee by the ATA in July, 1996. At the direction of the Subcommittee, the APSC analyzed the ATA draft and prepared an analysis of the legislation for the Subcommittee. The APSC analysis of the ATA draft legislation is noted on the official agenda of the Telecommunications Subcommittee meeting held on August 22, 1996. The APSC Chairman and Commissioners were present at the meeting of the Subcommittee with the members of the APSC staff who prepared the analysis to answer questions from the Subcommittee members.

A second draft of the ATA legislation substantially similar to the legislation enacted as 1997 Ark. Act 77 was circulated in September, 1996. In anticipation that the Telecommunications Subcommittee would again request the APSC to analyze the ATA revised draft legislation, the APSC Commissioners directed the members of our staff to analyze the draft legislation. However, the APSC was not requested to attend any further meetings of the Telecommunications Subcommittee.

On January 13, 1997, the Arkansas General Assembly convened in regular session. Senate Bill 54, which was enacted into law as 1997 Ark. Act 77 on February 4, 1997, was filed on January 15, 1997.

The ATA criticizes the analysis on the basis that it "must have been prepared in haste" because the APSC analysis is dated January 24, 1997, which is "just nine (9) days after the initial introduction

³ The ATA's Reply Comments state that "[i]t is unclear whether the analysis was prepared by an attorney, staff member, secretary, intern, or visitor." *Id.* at 10.

and only two (2) days after the bill's amendment."⁴ The ATA then states that "[t]he person providing the 19 page analysis did not have the benefit of time and careful consideration to examine the bill in detail prior to preparing this analysis."⁵ The Arkansas Telecommunications Regulatory Reform Act of 1997, 1997 Ark. Act 77, was enacted by the Arkansas General Assembly in a very brief period of time as the ATA Reply Comments assert. However, in preparing the analysis of the bill which became 1997 Ark. Act 77, the APSC had the benefit of months of study of the federal Telecommunications Act of 1996 and of a draft of the ATA legislation that was substantially similar to the legislation introduced as Senate Bill 54. Providing a thorough, accurate analysis of pending legislation in a relatively short period of time is common during legislative sessions. The January 22, 1997 amendment to the legislation referenced in the ATA Reply Comments did not require much time or study as it merely added the names of two additional sponsors of the legislation and deleted a phrase from one of the definitions in the legislation.

The ATA states that it is "unaware of the Arkansas PSC using the analysis in any forum or proceeding" and that "[i]ts usage by the Arkansas PSC is never established."⁶ The APSC has not had cause to use the analysis in any APSC proceeding to date. The document was prepared by the APSC for use in analyzing legislation under consideration by the Arkansas General Assembly. However, the ATA attorney, State Senator Hopkins, established in a newspaper article dated January 28, 1997, that the analysis of Senate Bill 54, enacted as 1997 Ark. Act 77, was prepared by the APSC staff and represented the views of the APSC Commissioners. In the article State Senator Hopkins said "the commission analysis doesn't mean the bill is faulty." He further elaborated on the analysis saying:

"I don't see anything that's just begging to be changed," Hopkins said, noting that he reviewed the commission's work over the weekend. "I think it's just a misunderstanding of what the bill says. But I do think this bill draws a tighter circle around their authority."⁷

The APSC takes no position on the merits of the Petition for Declaratory Relief filed by ACSI in this proceeding. After reading the Reply Comments, the APSC was compelled to correct the misrepresentations and inaccurate statements in the ATA comments regarding the origins and content of the APSC analysis attached to the Comments of AT&T. The ATA may disagree with the opinion of the APSC on the contents of the analysis prepared by the APSC but the ATA has attacked the integrity and origins of the document contrary to facts and circumstances known to the ATA. It is only to correct this situation that the APSC is compelled to add to the record in this proceeding.

⁴ ATA Reply Comments at 10.

⁵ Id. at 10.

⁶ Id. at 9-10.

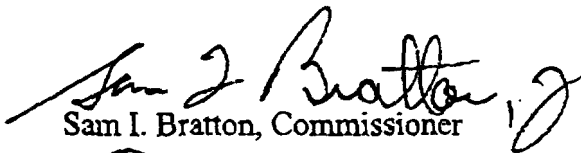
⁷ Arkansas Democrat-Gazette, January 28, 1997, at 9A.

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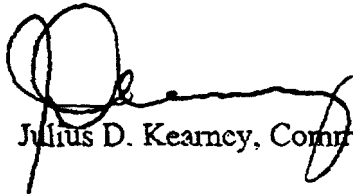
Sincerely,



Lavenski R. Smith, Chairman



Sam I. Bratton, Commissioner



Julius D. Kearney, Commissioner

cc: Reed Hundt, Chairman, FCC
Susan Ness, Commissioner, FCC
Rachelle Chong, Commissioner, FCC
James Quello, Commissioner, FCC
Tom Boasberg, Legal Advisor to Chairman Hundt
Jim Casserly, Legal Advisor to Commissioner Ness
Dan Gonzalez, Legal Advisor to Commissioner Chong
Paul Gallant, Legal Advisor to Commissioner Quello
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Richard Metzger, Deputy Chief, Common Carrier Bureau
Alex Starr, FCC
Melissa Newman, FCC